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FILED

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SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

<p>IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF CLIFFORD MURRAY, PETITIONER, TO COMPEL MOUNTAIN OIL AND GAS, INC. AND HOMELAND GAS AND OIL, LTD., RESPONDENTS, TO ACCOUNT FOR AND PAY ROYALTIES IN ACCORDANCE WITH THE PETITIONERS' INTEREST IN PRODUCTION FROM THE NIELSON 1- 20B1 WELL, LOCATED IN SECTION 20, IN TOWNSHIP 2 SOUTH, RANGE 1 WEST, USM, DUCHESNE COUNTY, UTAH.</p>	<p>MOTION TO DISMISS</p> <p>Docket No. 2010-016</p> <p>Cause No. 131-129</p>
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The Utah Division of Oil, Gas, and Mining ("Division"), by and through undersigned counsel, hereby moves the Utah Board of Oil, Gas, and Mining ("Board") to enter an order dismissing Cause No. 131-129.

The Board need not set the matter for an Investigation and Negotiation Conference by the Division because the Petitioner is not a "person entitled to oil and gas proceeds" as required by statute. According to Utah law governing the Board:

Any person entitled to oil and gas proceeds may file a petition with the board to conduct a hearing to determine why the proceeds have not been paid. Upon

receipt of the petition, the board shall set the matter for investigation and negotiation ...

Utah Code Ann. § 40-6-9(4), (5). This statute clearly states that only a person entitled to oil and gas proceeds may file a petition with the board to conduct a hearing and the Board need only set the matter for investigation by the Division if the person is entitled to oil and gas proceeds.

Absent a pooling agreement, Petitioner is not a person entitled to oil and gas proceeds for the subject lands. *Bennion v. Graham Resources, Inc.*, 849 P.2d 569, 571 (Utah 1993) (“A nonconsenting mineral interest owner within a drilling unit may not rely upon the Utah Act to enforce his or her rights unless a pooling arrangement is in effect.”). In *Bennion v. Graham Resources, Inc.*, the Utah Supreme Court held that “a pooling order must be in place before an operator is required to make an accounting and payment to a nonconsenting mineral interest owner.” 849 P.2d 569, 571 (Utah 1993). In other words, a non-consenting owner is not “legally entitled” to payment under Utah Code § 40-6-9 until a pooling agreement is in place. *See id.* at 572.

A pooling agreement or communitization agreement is currently not in place on the subject fee lands described by Petitioner as S½S ½, Section 20, Township 2 South, Range 1 West, U.S.M., Duchesne County, Utah. Since a pooling agreement is required for a non-consenting owner to be “entitled” to payment of oil and gas proceeds, and a pooling order is not currently in place, the Board should dismiss Petitioner’s request as presently unripe for adjudication.

A well operator is required to place in escrow any funds that may be required to be paid to a person who may be legally entitled to proceeds. Utah Code Ann. § 40-6-9.

The law requires oil and gas proceeds from the sale of production from any well producing oil or gas be paid to any person legally entitled to payment of the proceeds according to specific time limits and if accrued payments cannot be made within the time limits the payor is required to deposit the oil and gas proceeds credited to the eventual oil and gas proceeds owner in an escrow account in a federally insured bank or savings and loan institution using a standard escrow document form. *Id.*

Because no pooling order currently exists on the subject lands, the Petitioner's request should be dismissed.

DATED this 14 day of April, 2010.

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL



FREDRIC J. DONALDSON
STEVEN F. ALDER
Assistant Attorneys General

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DEPARTMENT OF NATURAL RESOURCES
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IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF CLIFFORD MURRAY, PETITIONER, TO COMPEL MOUNTAIN OIL AND GAS, INC. AND HOMELAND GAS AND OIL, LTD., RESPONDENTS, TO ACCOUNT FOR AND PAY ROYALTIES IN ACCORDANCE WITH THE PETITIONERS' INTEREST IN PRODUCTION FROM THE NIELSON 1-20B1 WELL, LOCATED IN SECTION 20, IN TOWNSHIP 2 SOUTH, RANGE 1 WEST, USM, DUCHESNE COUNTY, UTAH.

**[PROPOSED]
ORDER DISMISSING
CAUSE NO. 131-129**

Docket No. 2010-016

Cause No. 131-129

Having reviewed the Motion to Dismiss of the Utah Division of Oil, Gas, and Mining in the above-captioned matter, and for good cause appearing, the Utah Board of Oil, Gas, and Mining, hereby orders that this matter be dismissed.

So Ordered.

Utah Board of Oil, Gas, and Mining

Doug E. Johnson
Chairman

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing MOTION TO DISMISS, for Docket No. 2010-16, Cause No. 131-129 to be mailed with postage prepaid to the address shown and emailed, this 14 day of April 2010, to the following:

Clifford Murray
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Roosevelt, Utah 84066

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